

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002
(202) 442-9091

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

L.P. TRUCKING and LUTHER LEROY
PERKINS, JR.
Respondents

Case No.: I-00-11142

FINAL ORDER

I. Introduction

By Notice of Infraction (00-11142) served January 12, 2001, Respondents L.P. Trucking and Luther Leroy Perkins, Jr. were charged with violating 20 DCMR 605.1, which requires that reasonable precautions be taken to minimize the emission of any fugitive dust into the outdoor atmosphere.¹ 20 DCMR 605.1(c) specifically provides: “In the case of vehicles transporting dusty material or material which is likely to become dusty: (1) Fully covering the material in question, with a tarpaulin or other material” The Notice of Infraction alleges that Respondents’ truck violated 20 DCMR 605.1 on January 11, 2001 when it transported dirt without a full covering in the 2900 Block of Tilden Street, N.W. The Government sought a fine amount of \$100.00 for this alleged infraction.

¹ The Notice of Infraction was served upon Respondents at P.O. Box 11245, Takoma Park, MD 20913 and 10507 Campus Way South, Upper Marlboro MD 20774.

Upon Respondents' untimely plea of Deny to the Notice of Infraction, and request for a hearing before the administrative court pursuant to D.C. Code § 6-2712(a)(3), a hearing in this matter was held on April 10, 2001. Appearing at the hearing on behalf of the Government was Jacques Lerner, Esquire, Counsel to the Air Quality Division, Department of Health/Environmental Health Administration, and appearing on behalf of Respondents was Mr. Luther Leroy Perkins, Jr., who identified himself as the owner of L.P. Trucking. At the start of the hearing, the Government moved to amend the Notice of Infraction to change the \$100.00 fine for the alleged violation of 20 DCMR 605.1, a Class 4 infraction, to \$50.00 in accordance with the Civil Infractions Act of 1985 fine schedule. *See* 16 DCMR 3224.5(a),(d). Respondents did not oppose the Government's motion, which in turn was granted by this administrative court.

II. Summary of Evidence

Mr. Neil Williams, the inspector who issued the Notice of Infraction, testified at the hearing that a truck owned by Respondents transported dirt on the 2900 block of Tilden Street, N.W. without the dirt having been fully covered. As a defense to the alleged infraction, Respondents' witness, Mr. Luther Leroy Perkins, Jr., asserted that, based on the photograph supplied by the Government, the truck was not loaded, or, if loaded, was not moving, as its wheels appeared turned toward the curb. Unlike the Government's inspector, Respondents' witness did not personally observe the truck at the time of the alleged infraction. As to the lateness of their plea, Respondents' witness asserted that the Notice of Infraction was issued

during Respondents' busy period, and, as such, they did not retrieve mail from the P.O. Box address as frequently as they might during their normal season.

III. Findings of Fact

Based on the testimony at the hearing which this administrative court directly observed, the Government's admitted exhibit and the entire record herein, this administrative court makes the following findings of fact in this matter:

1. Respondent Luther Leroy Perkins, Jr. is the owner of Respondent L.P. Trucking.
2. On January 12, 2001 the Government served the Notice of Infraction (00-11142) upon Respondents at 10507 Campus Way South, Upper Marlboro, MD, 20774 by certified mail, return-receipt requested, and at P.O. Box 11245, Takoma Park, MD 20913 by certified mail, return-receipt requested.
3. On January 11, 2001, the Government's witness personally observed a truck owned by Respondents being loaded with dirt, and observed that same truck transporting the dirt without a full covering, and proceeding rapidly along the 2900 Block of Tilden Street, N.W. PX-106.
4. Respondents' witness had no first-hand knowledge of the condition or placement of the truck at the time of the alleged infraction, as he was working at another site.
5. The Notice of Infraction was issued during Respondents' busy season, and, as a result, Respondents did not retrieve mail from their Takoma Park P.O. Box

address as frequently as they might during the normal season. Respondents offered no evidence regarding their receipt of mail at the Upper Marlboro address.

IV. Conclusions of Law

1. Based on the photograph in PX-106, Respondents' witness speculates that Respondents' truck either was not loaded or, if loaded, was not moving at the time of the alleged infraction. The Government's witness, however, personally observed Respondents' truck being loaded with dirt, and transporting that dirt without a full covering. *See* 20 DCMR 605.1(c). Under these facts, the Government's witness was in a far better position to observe the actual condition and placement of the truck at the time of the alleged infraction than was Respondents' witness. Accordingly, this administrative court concludes that, based on a preponderance of the evidence, Respondents violated 20 DCMR 605.1 on January 11, 2001, and Respondents are liable for a fine in the amount of \$50.00 for that violation. *See* 16 DCMR 3224.5(a),(d).
2. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, "the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(A)." As noted above, Respondents' plea to the Notice of Infraction was untimely. Based on the record, Respondents have not established good cause for any reduction or suspension of the statutory penalty.

3. While this administrative court credits Respondents' witness's testimony that the Notice of Infraction was issued during Respondents' busy season and, as a result, they did not retrieve mail from the Takoma Park P.O. Box address as frequently, this does not establish good cause for failing to respond timely to the Notice of Infraction. Moreover, Respondents' witness's testimony regarding the Takoma Park P.O. Box does not explain Respondents' delay with respect to answering the same Notice of Infraction served on the Upper Marlboro address. Accordingly, Respondents are liable for the statutory penalty in the amount of \$50.00 in addition to the fine. *See* D.C. Code § 6-2712(e)-(f).

Therefore, upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable for the infraction as charged in the Notice of Infraction (00-11142), shall cause to be remitted a single payment totaling **ONE HUNDRED DOLLARS (\$100.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **4-25-01**

Mark D. Poindexter
Administrative Judge